

**BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

**Michael J. Roth, M.D.
Certificate # C-34453**

File No: 17-95-57553

Respondent.

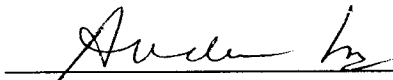
DECISION

The attached Stipulation is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on December 30, 1997.

It is so ordered December 23, 1997.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



**Anabel Anderson Imbert, M.D.
Chair
Panel B**

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD D. MARINO, Deputy Attorney
General (State Bar No. 90471)
California Department of Justice
300 South Spring Street
Los Angeles, California 90013
Telephone: (213) 897-8644

Attorneys for Complainant

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	No. 17-95-57553
Against:)	OAH No. L-1997060027
)	
MICHAEL JOEL ROTH, M.D.)	STIPULATION FOR
812 El Oro Lane)	SURRENDER OF LICENSE
Pacific Palisades, CA 90272)	
)	
Physician and Surgeon's)	
Certificate No. C34453,)	
)	
Physician Assistant Supervisor)	
Approval No. SA15735,)	
)	
Respondent.)	

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings, that the following matters are true:

1. Complainant, Ron Joseph, is the Executive Director of the Medical Board of California, Department of Consumer Affairs (hereinafter "the Board") and is represented by Daniel E. Lungren, Attorney General of the State of California, by Richard D. Marino, Deputy Attorney General.

2. Michael Joel Roth, M.D. (hereinafter "respondent")

1 is represented in this matter by attorney David L. Rosner, Esq.,
2 whose address is Rosner, Owens & Nunziato, 1925 Century Park
3 East, Suite 850, Los Angeles, California 90067-2709. Respondent
4 has counseled with his attorney concerning the effect of this
5 stipulation which respondent has carefully read and fully
6 understands.

7 3. Respondent has received and read the First Amended
8 Accusation which is presently on file and pending in Case Number
9 17-95-57553, OAH No. L-1997060027, before the Division of Medical
10 Quality, Medical Board of California, Department of Consumer
11 Affairs (hereinafter "the Division"), a copy of which is attached
12 as Exhibit A and incorporated herein by reference.

13 4. Respondent admits that, at the present time, he
14 suffers from a physical illness within the meaning of Business
15 and Professions Code section 822 such that he cannot practice
16 medicine in a safe and competent manner. Respondent hereby
17 surrenders Physician and Surgeon's Certificate C34453 for the
18 Division's formal acceptance.

19 5. Respondent understands that by signing this
20 stipulation he is enabling the Division of Medical Quality to
21 issue its order accepting the surrender of his Physician and
22 Surgeon's Certificate without further process. He understands
23 and agrees that Board staff and counsel for complainant may
24 communicate directly with the Division regarding this
25 stipulation, without notice to or participation by respondent or
26 his counsel. In the event that this stipulation is rejected for
27 any reason by the Division, it will be of no force or effect for

1 either party. The Division will not be disqualified from further
2 action in this matter by virtue of its consideration of this
3 stipulation.

4 6. Upon acceptance of the stipulation by the
5 Division, respondent understands that he will no longer be
6 permitted to practice as a physician and surgeon in California,
7 and also agrees to surrender and cause to be delivered to the
8 Division both his license and wallet certificate before the
9 effective date of the decision.

10 7. Respondent fully understands and agrees that when,
11 and if, he files an application for reinstatement of licensure
12 under Business and Professions Code section 822 *et seq.* or files
13 an application for the issuance of a new license to practice
14 medicine, the charges and allegations pending in First Amended
15 Accusation No. 17-95-57533, OAH No. L-1997060027, must first be
16 resolved. Respondent shall be entitled to an administrative
17 hearing on the aforementioned charges and allegations upon his
18 written request. At said hearing, the declarations of the
19 witnesses referred to as B.B. and J.F. in the pending First
20 Amended Accusation, executed September 30, 1997, and October 1,
21 1997, respectively, shall be admitted without objection.

22 Respondent waives and gives up his right to cross-examination of
23 these, but only these, witnesses. Respondent, otherwise, shall
24 be entitled to present a defense to the charges and allegations.

25 8. Respondent agrees to reimburse the Division its
26 costs of investigation and prosecution incurred, to date, in the
27 this matter in the amount of \$10,000, payable in eight (8) equal

1 installments. The first installment (\$1,250) shall be due within
2 90 days of the effective date of this stipulation for surrender
3 of license and each subsequent installment (\$1,250) due every 90
4 days thereafter. Failure to reimburse the Division's
5 investigative and prosecution costs in a timely manner shall
6 constitute grounds for denial of respondent's application for
7 reinstatement of licensure or the issuance of a new license
8 unless the Division agrees, in writing, to payment by an
9 alternative plan because of financial hardship. The filing of
10 bankruptcy by the respondent shall not relieve the respondent of
11 his responsibility to reimburse the Division for its
12 investigative and prosecution costs.

13 8. All admissions and recitals contained in this
14 stipulation are made solely for the purpose of settlement in this
15 proceeding and for any other proceedings in which the Division of
16 Medical Quality, Medical Board of California or other
17 professional licensing agency is involved, and shall not be
18 admissible in any other criminal or civil proceedings.

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EXHIBIT A

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD D. MARINO, Deputy Attorney
General (State Bar No. 90471)
California Department of Justice
300 South Spring Street
Los Angeles, California 90013
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Attorneys for Complainant

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	No. 17-95-57553
Against:)	OAH No. L-1997060027
))	
MICHAEL JOEL ROTH, M.D.)	
812 El Oro Lane)	FIRST AMENDED ACCUSATION
Pacific Palisades, CA 90272)	
))	
Physician and Surgeon's)	
Certificate No. C34453,)	
))	
Physician Assistant Supervisor)	
Approval No. SA15735,)	
))	
Respondent.)	
))	

The Complainant alleges:

PARTIES

1. Complainant, Ron Joseph, is the Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California (hereinafter the "Board") and brings this First Amended Accusation in above-captioned matter solely in his official capacity.

2. On or about August 18, 1972, Physician and Surgeon's Certificate No. C34453 was issued by the Board to Michael Joel

Roth, M.D. (hereinafter "respondent"), and at all times relevant to the charges brought herein, this license has been in full force and effect. Said certificate expired on October 31, 1996, for non-payment of renewal dues. A public letter of reprimand was issued against respondent on July 21, 1994. Respondent is a supervisor of a physician assistant. His physician assistant approval number SA 15735 expired on October 31, 1994, for non-payment of renewal dues.

3. On or about April 24, 1997, an Accusation in case number 17-95-57553 was filed with the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (hereinafter the "Division") against respondent. That accusation, together with all statutorily required documents, was duly served on the respondent on or about April 24, 1997, and respondent filed his Notice of Defense contesting that accusation on or about May 22, 1997. On or about September 30, 1997, respondent agreed to surrender his physician and surgeon's certificate by reason of the fact that he was suffering a physical illness such that he could not practice medicine in a safe and competent manner within the meaning of Business and Professions Code section 822. Respondent further agreed not to contest the accusation then pending against him if complainant, in turn, agreed to amend the accusation. Thereafter, the Medical Board of California accepted respondent's surrender of his physician and surgeon's certificate.

JURISDICTION

4. This First Amended Accusation is brought before the Board's Division of Medical Quality (hereinafter the "Division"), under the authority of the following sections of the California

1 Business and Professions Code (hereinafter the "Code"):

2 A. Section 2227 which provides that the Board may
3 revoke, suspend for a period not to exceed one year, or place
4 on probation, the license of any licensee who has been found
5 guilty under the Medical Practice Act.

6 B. Section 2234 which provides that
7 unprofessional conduct includes, but is not limited to,
8 the following:

9 "(a) Violating or attempting to violate, directly or
10 indirectly, or assisting in or abetting the violation of, or
11 conspiring to violate, any provision of this chapter.

12 "(b) Gross negligence.

13 "(c) Repeated negligent acts.

14 ". . . ."

15 C. Section 125.3 which provides:

16 "(a) Except as otherwise provided by law, in
17 any order issued in resolution of a disciplinary
18 proceeding before any board within the department or
19 before the Osteopathic Medical Board, the board may
20 request the administrative law judge to direct a
21 licentiate found to have committed a violation or
22 violations of the licensing act to pay a sum not to
23 exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 ". . .

26 "(c) A certified copy of the actual costs, or
27 a good faith estimate of costs where actual costs are not

1 available, signed by the entity bringing the proceeding
2 or its designated representative shall be prima facie
3 evidence of reasonable costs of investigation and
4 prosecution of the case. The costs shall include the
5 amount of investigative and enforcement costs up to the
6 date of the hearing, including, but not limited to,
7 charges imposed by the Attorney General.

8 ". . . ."

9 D. Section 16.01 of the Budget Act of 1997-98 which
10 provides:

11 "(a) No funds appropriated by this act may be
12 expended to pay any Medi-Cal claim for any service
13 performed by a physician while that physician's license
14 is under suspension or revocation due to a disciplinary
15 action of the Medical Board of California.

16 "(b) No funds appropriated by this act may be
17 expended to pay any Medi-Cal claim for any surgical
18 service or other invasive procedure performed on any
19 Medi-Cal beneficiary by a physician if that physician has
20 been placed on probation due to disciplinary action of
21 the Medical Board of California related to the
22 performance of that specific service or procedure on any
23 patient, except in any case where the board makes a
24 determination during its disciplinary process that there
25 exist compelling circumstances that warrant continued
26 Medi-Cal reimbursement during the probationary period.

27 ". . . ."

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Gross Negligence--Patient B.B.^{1/})

3 5. Respondent Michael Joel Roth, M.D., is subject to
4 disciplinary action under section 2234, subdivision (b), of the
5 Business and Professions Code in that respondent was grossly
6 negligent in his care and treatment of patient B.B. The
7 circumstances are as follows:

8 A. On or about May 10, 1995, patient B.B.
9 presented himself to the Pacific Oaks Medical Group with
10 complaints of fever, chills, and sore throat. B.B. was
11 examined by respondent who told B.B. to remove all of his
12 clothing except his underwear. Respondent left the
13 examining robe while B.B. disrobed.

14 B. B.B. was sitting on the examining table when
15 respondent reentered and began his examination. B.B.'s legs
16 were draped over the side of the table. Respondent checked
17 the patient's ears and throat.

18 C. Respondent then had B.B. lie face up on the
19 examining table. Respondent examined B.B.'s genitalia.
20 Respondent told B.B. to roll over onto his stomach. B.B. did
21 so. Without saying anything to the patient, respondent
22 inserted his finger into B.B.'s rectum. Respondent's finger
23 was gloved and lubricated. After removing his finger from the
24 patient's rectum, respondent removed and discarded the glove.

25
26 1. All patient references shall be by initials only. The true
27 name(s) of the patients shall be revealed to respondent upon his
timely written request for discovery under the applicable
provisions of the Administrative Procedure Act.

1 Respondent then spread the patient's buttocks and, using a
2 tissue, wiped the lubricant from the patient's anus.

3 D. The following acts and omissions of respondent
4 during the care and treatment of patient B.B. were extreme
5 departures from the standard of care then applicable in the
6 medical community.

7 (1) Performing a rectal examination without
8 first advising the patient.

9 (2) Performing a rectal examination during an
10 examination for complaints related to ears and throat.

11 (3) Not wearing gloves during the completion
12 of the rectal examination.

13 SECOND CAUSE FOR DISCIPLINE

14 (Gross Negligence--Patient J.F.)

15 6. Respondent Michael Joel Roth, M.D., is subject to
16 disciplinary action under section 2234, subdivision (b), of the
17 Business and Professions Code in that respondent was grossly
18 negligent in his care and treatment of patient J.F. The
19 circumstances are as follows:

20 A. On or about February 7, 1996, patient J.F.
21 presented himself to the Pacific Oaks Medical Group,
22 complaining of an infection on his neck. J.F. was examined by
23 respondent. At the end of the examination, respondent asked
24 the patient if he, respondent, could give the patient a hug.
25 J.F. acquiesced and respondent hugged the patient. Respondent
26 then asked J.F. if he would like to be invited to a party
27 respondent was having at his home sometime in May 1996.

1 B. On or about February 27, 1996, patient J.F.
2 again was examined by respondent in the course of respondent's
3 treatment of the patient's infection. During the course of
4 the examination, respondent gave J.F. respondent's business
5 card on which he had written his home telephone number. At
6 the conclusion of the examination, respondent accompanied J.F.
7 in the elevator down to the parking garage. Respondent tells
8 patient to call respondent at home and "let me know how you
9 are feeling or if you would like to get together sometime for
10 a dinner and movie." J.F. declines respondent's offer.

11 C. On or about February 28, 1996, respondent left
12 a message on J.F.'s home telephone number, saying, among other
13 things, "give me a call if you would like to get together
14 sometime."

15 D. On or about April 11, 1996, J.F. is again seen
16 by respondent at respondent's office. Respondent, among other
17 things, removed three moles from the patient's neck.
18 Respondent told J.F., "Promise me you will call me this
19 evening." Thereafter, J.F. received a letter from respondent,
20 dated April 17, 1996, in which respondent wrote:

21 "Dear Jason,

22 ". . . I hope you have a great time in
23 S.F. Wish I could be with you--

24 ". . . I won't see you at the closing
25 ceremonies cause there will be too many people
26 but would love to do dinner (out) sometime
27 thereafter.

1 "I will let you know about dinner at my
2 place in May as soon as the date is set.

3 ". . . give me a call if you have a
4 chance"

5 E. On or about April 23, 1996, J.F. is again
6 seen by respondent at respondent's office for the removal
7 of stitches. At the end of the visit, respondent again
8 asks if he can give the patient a hug.

9 F. The following acts and omissions of
10 respondent during the care and treatment of patient J.F.
11 were extreme departures from the standard of care then
12 applicable in the medical community.

13 (1) Asking to give the patient a hug.

14 (2) Giving the patient respondent's home
15 telephone and asking the patient to telephone respondent
16 at that number for the purpose of getting together
17 socially.

18 (3) Telephoning the patient and asking if the
19 patient would to socialize with respondent.

20 (4) Writing patient, among other things, "wish
21 I could be with you" and "would love to do dinner . . .
22 ."

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Repeated Negligent Acts)

25 7. Respondent Michael Joel Roth, M.D., is subject to
26 disciplinary action under section 2234, subdivision (b), of the
27 Business and Professions Code in that respondent was committed

1 repeated negligent acts in his care and treatment of patients B.B.
2 and J.F. The circumstances are as follows:

3 A. Complainant refers to and, by this reference,
4 incorporates herein the allegations in paragraphs 5 and 6,
5 inclusive, above, as though fully set forth.

1 PRAYER

2 WHEREFORE, the complainant requests that a hearing be
3 held on the matters herein alleged, and that following the hearing,
4 the Division issue a decision:

5 1. Revoking or suspending Physician and Surgeon's
6 Certificate Number C34453, heretofore issued to respondent Michael
7 Joel Roth, M.D.;

8 2. Revoking, suspending or denying approval of the
9 respondent's authority to supervise physician's assistants,
10 pursuant to Business and Professions Code section 3527;

11 3. Ordering respondent to pay the Division the actual
12 and reasonable costs of the investigation and enforcement of this
13 case, and probation monitoring if applicable; and,

14 4. Taking such other and further action as the Division
15 deems necessary and proper.

16 DATED: November 13, 1997.

17
18 
19 RICHARD D. MARINO
20 Deputy Attorney General

21 On Behalf Of

22 Ron Joseph
23 Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California

27 Complainant

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